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7 L.C., I.H., A.L., and Antonia Salas Ubaldo

8 **UNITED STATES DISTRICT COURT FOR THE**  
9 **CENTRAL DISTRICT OF CALIFORNIA**

10  
11 L.C., a minor by and through her  
guardian *ad litem* Maria Cadena,  
12 individually and as successor-in-interest  
to Hector Puga; I.H., a minor by and  
13 through his guardian *ad litem* Jasmine  
Hernandez, individually and as  
14 successor-in-interest to Hector Puga;  
A.L., a minor by and through her  
15 guardian *ad litem* Lydia Lopez,  
individually and as successor-in-interest  
16 to Hector Puga; and ANTONIA SALAS  
UBALDO, individually;

17  
18 Plaintiffs,  
vs.

19  
20 STATE OF CALIFORNIA; COUNTY  
21 OF SAN BERNARDINO; S.S.C., a  
nominal defendant; ISAIAH KEE;  
22 MICHAEL BLACKWOOD;  
BERNARDO RUBALCAVA; ROBERT  
23 VACCARI; JAKE ADAMS; and DOES  
24 6-10, inclusive,

25  
26 Defendants.  
27  
28

Case No. 5:22-cv-00949-KK-SHK

Honorable Kenly Kiya Kato

PLAINTIFFS NOTICE OF MOTION  
AND MOTION IN LIMINE NO. 5 TO  
EXCLUDE EVIDENCE OF STATE  
OF CALIFORNIA AND COUNTY  
OF SAN BERNARDINO'S  
FINDINGS THAT THE OFFICERS'  
USES OF FORCE WAS NOT  
CRIMINAL, WAS REASONABLE,  
JUSTIFIED, AND/OR WAS WITHIN  
POLICY

DATE: May 15, 2025

TIME: 10:30 a.m.

CTRM: 3

TRIAL: June 2, 2025

**TO THE HONORABLE COURT, ALL PARTIES, AND THEIR ATTORNEYS  
OF RECORD:**

3       **PLEASE TAKE NOTICE THAT** that Plaintiffs hereby move *in limine* for  
4 an order excluding any evidence, testimony, argument, or reference at trial to any  
5 findings by the State of California or the County of San Bernardino that the  
6 Defendant Officers' uses of force against decedent Hector Puga was not criminal,  
7 was reasonable, justified, and/or within the California Highway Patrol's policy or  
8 the San Bernardino County Sheriff's Department's policy, including any reference  
9 (whether implicit or explicit) to the fact that the State of California and the County  
10 of San Bernardino reviewed the incident, under Federal Rules of Evidence 401, 402,  
11 403, 801, and 802.

12        **Statement of Local Rule 7-3 Compliance:** This motion is made following a  
13 conference of counsel during which no resolution could be reached.

14 This Motion is based on this Notice of Motion, the Memorandum of Points  
15 and Authorities, the records and files of this Court, and upon such other oral and  
16 documentary evidence as may be presented at the time of the hearing.

18 | DATED: April 17, 2025 LAW OFFICES OF DALE K. GALIPO

Bv \_\_\_\_\_ /s/ *Hang D. Le*  
Dale K. Galipo  
Hang D. Le  
Attorneys for Plaintiffs

1 **I. INTRODUCTION**

2 This civil rights case arises out of the officer-involved incident with Hector  
3 Puga on February 17, 2021, that resulted in Mr. Puga's death after the involved  
4 officers' use of less-lethal and lethal force against Mr. Puga. Prior to the incident,  
5 none of the involved officers had ever encountered Mr. Puga nor knew anything  
6 about him except that he matched the description of a suspect in a prior freeway  
7 shooting. Plaintiffs—Mr. Puga's children and his mother—are proceeding to trial on  
8 claims for (1) Excessive Force under the Fourth Amendment, pursuant to 42 U.S.C. 7  
9 1983; (2) Unlawful Interference of Familial Relationship under the Fourteenth  
10 Amendment, pursuant to 42 U.S.C. 7 1983; (3) Battery under California law; (4)  
11 Negligence under California law; and (5) Violation of California Civil Code section  
12 52.1 (Bane Act). As explained herein, the jury's evaluation of Plaintiffs' core claims  
13 can only be based on the information known to the defendant officers at the time they  
14 used force.

15 Plaintiffs hereby bring this Motion *in Limine* to exclude at trial evidence and  
16 argument regarding any post-incident findings by the State of California or the  
17 County of San Bernardino that the Defendant Officers' uses of force during the  
18 incident, including deploying pepper balls at Mr. Puga for 30 to 45 minutes, the use  
19 of tasers against Mr. Puga, and shooting Mr. Puga with lethal firearms. Plaintiffs  
20 anticipate that Defendants may attempt to present evidence and/or argument at trial  
21 that use-of-force investigations were conducted by the State of California and the  
22 County of San Bernardino that resulted in a finding that the officers acted lawfully  
23 when they deployed pepper balls, deployed their tasers, and shot Mr. Puga, and that  
24 these uses of force were reasonable and "within policy." Plaintiffs further anticipate  
25 that Defendants may attempt to use this evidence to attempt to persuade the jury to  
26 determine that the Defendant Officers' uses of force were reasonable.

27 Accordingly, by way of this Motion, Plaintiffs seek to exclude any evidence,  
28 testimony, argument, or reference at trial to any findings by the State of California

1 and by the County of San Bernardino that the use of force was any of the following:  
2 (1) within policy; (2) reasonable; (3) justified; or (4) lawful.

3        This Motion *in Limine* is based on several independent rationales. First, this  
4 evidence is irrelevant pursuant to Federal Rules of Evidence, Rules 401 and 402,  
5 because this evidence is immaterial to the issues to be decided by the jury in the  
6 instant case. Second, this evidence usurps the jury's role, and should be excluded  
7 under Federal Rules of Evidence, Rule 403 on the grounds that this evidence would  
8 confuse the issues, mislead the jury, cause undue delay, and waste this Court's time.  
9 Further, such evidence would be unduly prejudicial to Plaintiffs under Rule 403, and  
10 such prejudicial effect would greatly outweigh any possible probative value of this  
11 evidence. Third, this Motion is also made on the grounds that the State of California's  
12 findings are hearsay (particularly any reports) for which there is no exception under  
13 Federal Rules of Evidence, Rules 801 and 802.

14 **II. ARGUMENT**

15 **A. Evidence of Any Post-Incident Agency Findings and/or Conclusions is  
16 Irrelevant and Should Be Excluded Under Federal Rules of Evidence,  
17 Rules 401 and 402.**

18        Under Federal Rule of Evidence 401, evidence is only relevant if "it has any  
19 tendency to make a fact more or less probable than it would be without the  
20 evidence," and the fact is "of consequence in determining the action." Fed. R. Evid.  
21 401(a). Evidence that is not relevant is inadmissible. Fed. R. Evid. 402. In  
22 determining whether an officer's use of force was objectively reasonable, trial courts  
23 and juries must confine their inquiry to the information known to the officer at the  
24 time of the use of force. *See Graham v. Connor*, 490 U.S. 386, 396 (1989). "The  
25 clarity of hindsight cannot provide the standard for judging the reasonableness of  
26 police decisions made in uncertain and often dangerous circumstances." *Tennessee  
27 v. Garner*, 471 U.S. 1, 26 (1985). The "reasonableness" standard is an objective one.  
28 *Kingsley v. Hendrickson*, 576 U. S. 389, 402 (2015).

1       The relevant legal issue is thus whether Defendants' use of force against Mr.  
2 Puga was "objectively reasonable" in light of the facts and circumstances  
3 confronting them." *See Graham*, 490 U.S. at 397. The reasonableness analysis must  
4 be based only "upon the information the officers had when the conduct occurred."  
5 *Saucier v. Katz*, 533 U.S. 194, 207 (2001); *see Hayes v. Cnty. of San Diego*, 736  
6 F.3d 1223, 1232-33 (9th Cir. 2013) ("[W]e can only consider the circumstances of  
7 which [the officers] were aware when they employed deadly force").

8       Here, the defendant officers pursued and attempted to apprehend Mr. Puga  
9 based on Mr. Puga and his vehicle matching the description of a suspect of an earlier  
10 freeway shooting. The Defendant Officers obviously could not have had the post-  
11 incident findings and conclusions of the State of California and the County of San  
12 Bernardino before the incident.

13       At trial, the jury must determine whether Defendant Officers used excessive  
14 or unreasonable force when they deployed pepper balls for 30 to 45 minutes at Mr.  
15 Puga, when they deployed their tasers at Mr. Puga, and when they shot Mr. Puga. To  
16 determine whether the use of force was lawful, the jury will be asked to look at the  
17 objective circumstances facing the Defendants at the time of the incident and to  
18 consider factors such as "the type and amount of force used" and "[w]hether [Mr.  
19 Puga] posed an immediate threat to the safety of [Defendant Officers] or others."  
20 Ninth Circuit Manual of Model Jury Instructions, 9.25 (2017). What the State of  
21 California and County of San Bernardino investigators purported to determine or  
22 conclude *ex post facto* about the uses of force does not bear on any disputed fact or  
23 on any element of any claim or defense in this case. Indeed, any subsequent findings  
24 of the State of California and the County of San Bernardino are not probative of the  
25 factual circumstances confronting Defendant Officers at the time of the shooting.  
26 Accordingly, this evidence is irrelevant as to questions of Defendants' liability for  
27 the violations of Mr. Puga's rights under federal and state law. Because evidence of  
28 the State and County's findings are not probative of any fact of consequence of the

1 determination of this action, this evidence should be excluded.

2           **B. Evidence of the State of California and County of San**  
3           **Bernardino's Findings and Conclusions is Unfairly Prejudicial**

4           Exposing the jury to the State's and County's post-incident findings and  
5 conclusions would unduly prejudice Plaintiffs by creating a substantial risk of a  
6 decision by the jury on an improper basis. Rule 403 provides for the exclusion even  
7 of relevant evidence "if its probative value is substantially outweighed by a danger  
8 of...unfair prejudice, confusing the issues, [and/or] misleading the jury..." Evidence  
9 is unfairly prejudicial if it creates an "undue tendency to suggest decision on an  
10 improper basis, commonly, though not necessarily, an emotional one." *United States*  
11 v. *Hankey*, 203 F.3d 1160, 1172 (9th Cir. 2000); *see Larez v. City of Los Angeles*,  
12 946 F.2d 630, 642 n.5 (9th Cir. 1991) (evidence is likely to inflame the jury if it  
13 tends to evoke a juror's anger or punitive impulses).

14           Even if the foregoing evidence has some probative value, it should be  
15 excluded under Federal Rules of Evidence, Rule 403 because it is highly prejudicial,  
16 poses a significant risk of consuming the jury, and would cause undue delay and  
17 waste of time. The danger presented by these administrative "findings" and  
18 "conclusions" is that they usurp the jury's role to independently weigh the evidence  
19 and reach its own conclusion based on the facts and the law. The jury should decide  
20 the case based on its own evaluation of the evidence presented, and not based on  
21 what some authority figure has supposedly already decided. The danger presented  
22 by this kind of testimony is acute. Determining the reasonableness of the Defendant  
23 Officers' actions is a task for the jury, and there is a significant risk that the jury  
24 might give undue deference to the findings of the State of California or the County  
25 of San Bernardino. On the basis of the testimony of authority figures or official-  
26 sounding determinations by the State's and County's high-ranking officials, the jury  
27 might be tempted to disregard the testimony of eyewitnesses, the physical and  
28 forensic evidence, the law, and the jury instructions, and instead decide that the use

1 of force against Mr. Puga was justified simply because an authority figure already  
2 purported to have determined that the use of force was justified. The jury might feel  
3 bound to abide by the findings of the State of California or the County of San  
4 Bernardino rather than reaching its own independent conclusions based on all of the  
5 evidence. For these reasons, the State and County's findings and conclusions should  
6 be excluded pursuant to Rule 403.

7 Moreover, the San Bernardino County District Attorney's Office makes a  
8 finding with an eye toward criminal prosecution. This review and determination is  
9 based on a criminal "beyond a reasonable doubt" standard, rather than the civil  
10 "preponderance of the evidence" standard that is applicable in this case. Therefore,  
11 informing the jury that the San Bernardino County District Attorney reviewed this  
12 incident and opted not to criminally prosecute the involved officers will likely (and  
13 improperly) persuade the jury to reach a civil finding based on a criminal standard  
14 of liability. In fact, even informing the jury—either implicitly or explicitly—that the  
15 SBDA reviewed the incident carries the same risk, as the jury is likely to infer that  
16 criminal charges were not brought against the involved officers. When balanced  
17 against the substantial risk that the SBDA's conclusions may influence the jury to  
18 reach a verdict based on an improper legal standard and thus invite juror error, this  
19 evidence should be excluded pursuant to Rule 403.

20 **C. Evidence of the State of California and the County of San  
21 Bernardino's Findings and Conclusions is Hearsay Under Federal  
22 Rules of Evidence, Rules 801 and 802.**

23 Any entity's determination—including the State or County's findings—that  
24 the use of force was "justified," "within policy," and/or "lawful" would constitute  
25 hearsay under Federal Rules of Evidence, Rules 801 and 802 and should  
26 alternatively be excluded on this ground. Hearsay evidence is evidence of a  
27 statement that was made other than by a witness while testifying at the current trial  
28 or hearing and that is offered to prove the truth of the matter stated. Fed. R. Evid.,

1 Rule 801. Even if a hearsay statement falls under an exception to the rule, it is not  
2 admissible if such statement consists of one or more statements that are themselves  
3 hearsay. *See Fed. R. Evid.*, Rule 805.

4 First, the State and County's findings themselves (as well as any findings by  
5 any other agency) are hearsay if offered at trial to prove that the officers' conduct  
6 was reasonable, justified, and/or within policy. If documentation of the findings  
7 and/or conclusions are proffered at trial, then this would be hearsay as well. Insofar  
8 as those findings and conclusions are based on statements by law enforcement  
9 witnesses, investigators, detectives, supervisors, or other officials as to what  
10 happened during the use of force, the findings and conclusions would constitute or  
11 incorporate multiple hearsay. Thus, the State and County's findings and conclusions  
12 should alternatively be excluded pursuant to Rules 801 and 802.

13 **III. CONCLUSION**

14 For the foregoing reasons, Plaintiffs respectfully request the Court grant  
15 Plaintiffs' Motion in Limine No. 5 to exclude any evidence, argument, testimony, or  
16 reference at trial to any findings by the State of California or the County of San  
17 Bernardino that the Defendant officers' uses of force against decedent Hector Puga  
18 was not criminal, was reasonable, justified, and/or within the California Highway  
19 Patrol's policy or the San Bernardino County Sheriff's Department's policy,  
20 including any reference (whether implicit or explicit) to the fact that the State of  
21 California and the County of San Bernardino reviewed the incident.

22  
23 DATED: April 17, 2025

LAW OFFICES OF DALE K. GALIPO

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Bv \_\_\_\_\_ /s/ *Hang D. Le*  
26 Dale K. Galipo  
Hang D. Le  
27 Attorneys for Plaintiffs

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